



POLICE DEPARTMENT

January 8, 2024

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In the Matter of the Charges and Specifications :

Case No.

- against - :

2019-21556

Police Officer Anthony Torres :

Tax Registry No. 936087 :

81 Precinct :

-----X
At:

Police Headquarters
One Police Plaza
New York, NY 10038

Before:

Honorable Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU:

Deanna Everett-Johnson, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Police Officer Anthony Torres, on or about February 24, 2019, at approximately 1730 hours, while assigned to the 81 Precinct and on duty inside [REDACTED], Apt. [REDACTED], Kings County, abused his authority as a member of the New York City Police Department in that he entered [REDACTED], Apt. [REDACTED], in Brooklyn, without sufficient legal authority.

P.G. 210-03, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

2. Police Officer Anthony Torres, on or about February 24, 2019, at approximately 1730 hours, while assigned to the 81 Precinct and on duty inside [REDACTED], Apt. [REDACTED], Kings County, abused his authority as a member of the New York City Police Department in that he failed to provide Complainant¹ with a business card without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 1

PUBLIC CONTACT –
GENERAL

P.G. 212-11, Page 6, Paragraph 24(a)

INVESTIGATIVE
ENCOUNTERS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 29, 2023. Respondent, through his counsel, entered a plea of Not Guilty. The CCRB offered Body-Worn Camera video, surveillance video, and the hearsay statement of Complainant in evidence.² Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all the evidence in this matter, the Tribunal finds Respondent Guilty of the charged misconduct. The

¹ Complainant's identity is known to the Tribunal.

² Complainant attempted to provide virtual testimony on the day of trial, but the video transmission was unreliable. Its poor audio quality made it difficult for the court reporter to transcribe the witness's testimony verbatim. The Tribunal took several recesses to allow CCRB and DCT staff to correct the deficiencies in the video transmission, but to no avail. On the application of Respondent, to which CCRB objected, the Tribunal ruled that, based upon those circumstances and the right of Respondent to a fair proceeding, Complainant's virtual testimony would not be an adequate substitute for live trial testimony.

Tribunal further recommends the forfeiture of three vacation days and formal retraining in warrantless entries.

ANALYSIS

The following is a summary of the facts which are not in dispute.

On February 24, 2019, at approximately 1730 hours, Respondent knocked on the door of Apartment [REDACTED], [REDACTED]. He, Sergeant Jean-Pierre, Police Officer McDuffie, and Police Officer Harris responded to that location to investigate a complaint of a domestic assault. After knocking several times, Complainant opened the door and asked the assembled police officers what they wanted. Sergeant Jean-Pierre asked Complainant for Person A and Person B, the two suspects in the domestic assault who were family members of Complainant. As they asked these questions, Respondent stood approximately one foot inside Complainant's apartment, with his right shoulder leaning against the door and his back against it.

Complainant spoke with police officers at her front door for approximately two and one-half minutes before then-Police Officer Emily Harris entered the apartment. As Police Officer Harris began walking into the apartment, Respondent moved away from the door and followed Harris into the apartment's hallway, keeping her in sight. Respondent proceeded no further into the apartment. As Police Officer Harris began walking back to the front door, Respondent exited the apartment.

At no point during the encounter with Complainant did Respondent provide her with a business card.

The lawfulness of Respondent's initial entry into Complainant's apartment is in dispute, as is his further entry into the apartment hallway.

The following is a summary of the evidence presented at the trial.

CCRB offered Complainant's March 12, 2019, hearsay statement in evidence (CCRB Ex. 4). In her statement, Complainant alleged that on February 24, 2019, there was a physical altercation in her apartment between several guests. After the disturbance, she asked the guests to leave. Shortly after that, Complainant heard knocking at her front door; when she opened the door, she saw several police officers, including Respondent, and other civilians who had some connection to the earlier disturbance inside her apartment (*Id.* at 3-5).

Complainant stated that once she opened the apartment door, Respondent placed his foot in the doorway. She then told him, "You don't have a search warrant," to which he replied, "I don't need a search warrant." Complainant then informed Respondent that he was "under [her] camera." According to Complainant, Respondent replied, "Yeah, but you're on the camera right here." Complainant then told Respondent, "Well, evidently you're going to be wrong, because you can't put your foot in my door" (*Id.* at 5, 22-23, 32, 44).

Complainant stated that Police Officer Harris then told her, "If you don't let us in, we're just going to keep coming. You don't want them to keep coming back, so let me in" (*Id.* at 6, 24, 33). Complainant claimed that she decided at that point to permit the police officers to enter her apartment because she was scared (*Id.* at 6, 35). Complainant explained that she took Police Officer Harris' comments to be "an indirect threat" (*Id.* at 33). According to the Complainant, she "let Ms. Harris in," who looked "all through the house" (*Id.* at 6). Once Police Officer Harris asked Complainant's son-in-law for his name, she told Harris that she had no right to ask for anyone's name, then escorted her from the apartment³ (*Id.*).

³ I find that there is some evidence of Complainant's bias against Police Officer Harris, as she referred to her with a slur relating to sexual identity (CCRB Ex. 4 at 25). Complainant also claimed that Harris was rude and that "everybody got a problem with her" in Complainant's building (*Id.* at 5).

Complainant admitted she was “mad at the officers,” partly because Respondent put his foot in her doorway.⁴ (*Id.* at 7). She also admitted that she lied to the police officers about the location of an individual they inquired about (CCRB Ex. 4 at 34).

CCRB offered video evidence obtained from (1) Body-Worn Cameras worn by Respondent and Police Officer McDuffie (CCRB Exs. 1, 2) and (2) a surveillance camera positioned above Complainant’s door (CCRB Ex. 3). The relevant portions of the events depicted on those videos are summarized as follows:

CCRB Exhibit 1: Respondent’s body-worn camera

- 00:00-02:15: Respondent, Sergeant Jean-Pierre, Police Officer McDuffie, and Police Officer Harris take the elevator to the fourth floor and walk down the hall. Respondent knocks loudly on the door multiple times.
- 02:16-02:31: Complainant opens the door. Respondent asks if an individual is in the apartment, and Complainant says, “No.” Respondent asks Complainant whether they can check, and she responds, “You gotta have a search warrant.” Respondent replies, “We don’t need a search warrant.”
- 02:32-03:05: Sergeant Jean-Pierre begins speaking with Complainant. Respondent appears to be standing on the threshold of the doorway; his body-worn camera is capturing the door jam and the front entry wall of the apartment, upon which there is a light switch.
- 03:06-04:05: Respondent turns his body toward Complainant; his body-worn camera captures the inside of the apartment, and the doorframe is out of view.
- 04:06-04:50: Police Officer Harris begins speaking with Complainant. Complainant acknowledges that she knows Harris. Respondent’s body-worn camera is capturing the apartment’s interior, and the doorframe is out of view.
- 04:51-05:25: Police Officer Harris asks Complainant, “Mind if I walk in?” Harris then steps into the apartment as Complainant yells at individuals (other than the officers)

⁴ Complainant explained further that she was also angry because she believed the police officers “[told her] past business to the people,” referring to the individuals who followed the police officers to her apartment. Complainant was also upset because police came to her door a second time and asked her if she wanted to file a report; she declined and stated that she would file one at the 83 Precinct. According to Complainant, she eventually went to the 81 Precinct, where her son had been arrested, but she was not permitted to file a report there (CCRB Ex. 4 at 27). She then called Internal Affairs and complained (*Id.* at 28). I find that Complainant’s admission to being angry with the police officers is additional evidence of her bias against them.

who seem to be in the hallway. Harris steps further into the apartment, and Respondent follows her.

- 05:26-06:08: Police Officer Harris explains to Complainant why she stepped into the apartment, saying she did not want to have an exchange with everyone inside and outside the apartment. Complainant says to Harris, "You're welcome in here." Complainant repeatedly stated that the individual they are looking for is not in the apartment. Harris asks if Complainant minds if they take a look in the apartment, and Complainant says, "I do mind."
- 06:09-06:14: Respondent asks, "Ma'am, is she here or not?" Complainant responds, "Come on," and the female officer walks past Respondent. Complainant then says, "You wait right there," and Respondent answers, "Okay, I'll wait right here."
- 06:15-07:32: Respondent remains in the hallway as Police Officer Harris checks the apartment. Harris asks to check another room. Respondent stays in the entryway until Harris returns, and they exit the apartment.

CCRB Exhibit 2: PO McDuffie's body-worn camera

- 00:00-01:19: The officers are in the elevator and exit on the fourth floor. They walk down the hallway to Apartment 4G.
- 01:20-01:37: Respondent leans against the door with his right hand pressed against it. He knocks loudly on the door multiple times and then waits for an answer.
- 01:38-02:07: Respondent knocks loudly on the door again and then waits for an answer. Police Officer McDuffie is standing behind Sergeant Jean-Pierre, blocking Respondent from view.
- 02:08-02:27: Respondent knocks loudly on the door a third time. Complainant opens the door. Sergeant Jean-Pierre and Police Officer Harris stepped in front of Police Officer McDuffie, blocking Respondent from view.
- 02:28-02:33: Respondent is in view on the body-worn camera footage. He appears to be past the apartment threshold as he speaks with Complainant, telling her that they do not need a search warrant to search the apartment.
- 02:34-04:05: Respondent steps back against the door as Sergeant Jean-Pierre begins to speak with Complainant. Sergeant Jean-Pierre and Police Officer Harris are standing close to the doorframe. Sergeant Jean-Pierre blocks the view of Respondent.
- 04:06-04:50: Police Officer Harris asks to speak with Complainant. Sergeant Jean-Pierre steps to the side of the doorframe, and Respondent stands against the open apartment door inside. Respondent stands against the door, his head right in front of the

apartment number in the center of the door, as Police Officer Harris speaks with Complainant.

04:51-05:09: Police Officer McDuffie steps down the hall to speak with the individuals standing there. The woman tells the officer, "I'm not going to stand here and listen to these lies." The officer asks, "She knows exactly who the people are," and the woman responds, "Yes."

05:10-05:49: Police Officer McDuffie walks back toward the apartment door. A woman in a yellow shirt approaches and asks, "What's going on?" As Police Officer McDuffie turned toward the door, only the sergeant stood in the doorway. Sergeant Jean-Pierre steps into the hallway and tells Police Officer McDuffie, "You can go off."

CCRB Exhibit 3: Surveillance Video

00:00-00:20: Respondent walks down the hallway, followed by Sergeant Jean-Pierre, Police Officer McDuffie, Police Officer Harris, and two civilians. He approaches the door; only the top of his head is visible in the camera frame.

00:21-00:46: Respondent is out of view of the camera. Sergeant Jean-Pierre and Police Officer Harris step up against the door while Police Officer McDuffie and the two civilians stand further back in the hallway. Police Officer Harris then steps inside the apartment, out of view of the camera.

00:47-01:02: Sergeant Jean-Pierre steps away from the door and into the hallway to speak with the civilians. The only officers in view of the surveillance camera are Police Officer McDuffie and Sergeant Jean-Pierre.

01:03-01:14: Respondent steps out into the hallway, coming back into view of the camera. The officers and civilians are all in the hallway before exiting.

Respondent testified that on February 24, 2019, he was on duty as the patrol supervisor's operator (T. 61). At about 1730 hours, he received a request from two police officers for a sergeant to respond to [REDACTED] in connection with a family dispute that escalated into an altercation (T. 61-62, 79). At that location, Respondent, Sergeant Jean-Pierre and the other two police officers were told that the two suspects involved in the altercation were at Apartment [REDACTED], [REDACTED]; that building adjoins [REDACTED] (T. 62-63, 81).

Respondent, along with Sergeant Jean-Pierre and the other police officers, proceeded to Apartment [REDACTED] and knocked on the door (T. 63). He testified that he went to that apartment to look for two suspects in the assault. He was familiar with that apartment, having previously visited it (T. 65). Complainant eventually answered the door and told Respondent that the two suspects did not live there (T. 66). Respondent then asked Complainant for permission to enter the apartment. She refused (T. 66-67). Sergeant Jean-Pierre was also asking Complainant questions, including whether or not the suspects were inside the apartment (T. 67).

Respondent testified that there came a point where Police Officer Harris entered the apartment while Complainant was at the apartment door, still being questioned; he described her mood as “unhappy” and “agitated” (T. 68, 87). He testified that he remained by the apartment door, with the door behind him, standing approximately one foot inside the apartment (T. 68-69). Respondent testified that at approximately the 6:30 mark on his Body-Worn Camera video, at Sergeant Jean-Pierre’s direction, he walked two or three steps further into the apartment to see where Police Officer Harris had gone; he testified that he also did so because he was concerned about Police Officer Harris’ safety (T. 69-70, 105). Respondent admitted that he took this action despite being aware that Complainant did not want him inside (T. 70-71, 104).

Respondent conceded that Complainant never permitted him to step inside her apartment and never told him explicitly that he could come in (T. 88, 92-93). He acknowledged that Complainant said he needed a warrant to enter and that no one informed Complainant that she did not have to consent to their entry (T. 88-89, 100). Respondent admitted that because of how he placed his body, with his back against the apartment door, Complainant was unable to close the door if she wished (T. 89-90).

Respondent conceded that he did not hear anything inside the apartment that would have led him to believe that he was facing an emergent situation; he further acknowledged that he did not see either of the suspects he was looking for flee into the apartment (T. 102).

While Respondent admitted that he never gave Complainant a business card, he explained that she never asked him for one (T. 103).

Specification 1: Entry Without Sufficient Legal Authority

I find that CCRB has met their burden of proof by a preponderance of the relevant, credible evidence that on February 24, 2019, Respondent entered Apartment [REDACTED], [REDACTED], without sufficient legal authority.

Warrantless arrests, searches, and seizures inside a home are “presumptively unreasonable” (*Payton v. New York*, 445 U.S. 573 [1980]). The Fourth Amendment, however, is not violated every time police enter a private residence without a warrant, as certain exceptions are recognized under the law. A well-established exception to the warrant requirement exists where police have obtained the voluntary consent of a party possessing the requisite authority over the premises that police are seeking to inspect (*see People v. Adams*, 53 N.Y.2d 1 [1981], citing *Schneckloth v. Bustamonte*, 412 U.S. 218 [1973]) [“It is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent”]; *see also People v. Feerick*, 93 N.Y.2d 433, 451 [1999]). However, “consent to a search, a relinquishment of constitutional protection...against unjustified official intrusion, must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent” (*People v. Gonzalez*, 39 N.Y.2d 122, 124 [1976]; *see also Disciplinary Case No. 80206/04* [Aug. 12, 2005]) [no voluntary consent was given where

the door was opened in response to Respondent's implicit threat that he would break down the door])).

The proponent of a consent exception to the Fourth Amendment "bears [a] heavy burden" (see *People v. Caldwell*, 221 A.D.2d 972 [4th Dept. 1995], citing *Gonzalez*, 39 N.Y.2d at 128; see also *People v. Packer*, 49 A.D.3d 184, 186 [1st Dept. 2008] *aff'd* 10 N.Y.3d 9125 [2008])["It is a basic premise of the law of search and seizure that police-initiated intrusions must be justified at their inception"])).

Based upon the totality of the evidence, I find that Respondent crossed the threshold of Complainant's apartment without a search warrant and without first attempting to obtain Complainant's consent to enter. It is undisputed that when Complainant challenged him at the door of her apartment by telling him he needed a warrant, he responded that he did not. This assertion was incorrect. There is no evidence in the record of any exigent circumstances which would have permitted a warrantless entry (see *Payton*, 445 U.S. at 590). Furthermore, when Respondent asked Complainant if they (the police officers) could come in, she flatly refused. Respondent conceded that he made no further attempt to obtain Complainant's consent (see generally P.G. 212-11[16]; Operations Order 50 [10/11/16]; Consent to Search [P.D. 541-030]). Thus, Respondent's initial entry into Complainant's apartment was unconstitutional and constituted misconduct.

Based on the same record, I note that Complainant permitted Police Officer Harris to enter her apartment, apparently to assure her that the suspects she was looking for were not present therein.⁵ The credible evidence establishes that Sergeant Jean-Pierre directed

⁵ While CCRB argued that Complainant's apparent consent was not voluntarily given, this Tribunal does not address that issue. As Police Officer Harris has offered to settle her disciplinary charges, the lawfulness of her conduct is not before this Tribunal.

Respondent to follow Harris into the apartment to ensure her safety. This Tribunal has held that a respondent who makes an entry “in a good-faith effort to protect [a fellow police officer] as they entered a potentially dangerous environment” does not commit actionable misconduct (*see Disciplinary Case No. 2018-18669* [November 22, 2019]). In this case, Respondent has made an even more substantial showing by establishing that he made further entry into Complainant’s apartment acting on the order of a superior officer.

Based upon the foregoing, I find Respondent Guilty of Specification 1.

Specification 2: Failure to Provide Business Card

I find that CCRB has met its burden of proof by a preponderance of the relevant, credible evidence that on February 24, 2019, Respondent engaged in misconduct when he failed to provide Complainant a business card.

Patrol Guide procedure 203-09 (10/19/18), and its successor, Administrative Guide 304-11, require uniformed members of service to “offer a business card, as appropriate, to members of the public upon conclusion of certain law enforcement activities.” These activities are:

- a. Noncustodial questioning of individuals suspected of criminal activity (**Level 2 Encounter**)
- b. Stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter (**Level 3 Encounter**)
- c. Frisk (**Level 3 Encounter**)
- d. Search of persons or property, including vehicles
- e. Roadblock or checkpoint stops, including checkpoints related to enforcement of Article 31 of the Vehicle and Traffic Law (Alcohol and Drug-Related Offenses), but not including planned security checks of vehicles at sensitive locations or street closures for public events or emergencies
- f. Home search
- g. Assigned Detective Only: First in-person questioning of victims and/or witnesses to a crime.

(*Id.*). UMOS are directed to offer a pre-printed RIGHT TO KNOW BUSINESS CARD at the conclusion of the law enforcement activities listed above, “unless providing this information would impair a criminal investigation, or exigent circumstances are present (*i.e.*, physical resistance, flight, imminent danger of physical injury or damage to property, or other factors make such procedure impractical)” (*Id.*).

“Uniformed members of service may offer business cards, as appropriate, and at their discretion, in situations that fall outside of the defined law enforcement activities. In addition, members are also to provide business cards, as appropriate, at the request of members of the public” (P.G. 203-09 (10/19/18); A.G. 304-11).

Based upon the evidence in the record, particularly the BWC footage in CCRB’s Exhibit 2, the transcript of the recording in CCRB’s Exhibit 4, and Respondent’s own admission, I find by a preponderance of the evidence that Respondent did not provide a business card to Complainant.

A fair reading of the procedure suggests that its purpose is to direct UMOS to facilitate the public’s ability to seek redress for police interactions that allegedly interfere with their liberty by providing sufficient information to identify the police officer involved. These interactions comprise the portion of the procedure where the UMOS must offer a business card, regardless of whether the citizen asks for one. The scenario, in this case, seems to be a logical fit for the category of “home search.” Respondent’s belief that he did not have to provide a business card to a person who did not request one was incorrect and based upon a mistaken understanding of the procedure.

Based upon the foregoing, I find Respondent Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 10, 2005, has been found guilty of unlawful entry and failure to provide a business card.

The CCRB has recommended a penalty of three vacation days for each Specification, to run consecutively with each other, for a total of six penalty days. Based on the circumstances presented in this case, an alternative sanction is appropriate.

While it is true that Respondent lacked sufficient legal authority for his entry into Complainant's apartment, there is no evidence in the record which suggests that he was rude or disrespectful in his interaction with her, despite her accusation to the contrary. The record establishes that although Complainant was agitated during the encounter, Respondent maintained a calm demeanor. Whether his ability to keep his professional composure in that situation is attributable to his 18 years of service in this Department, being a combat veteran, or simply his personality, in the view of this Tribunal, he displayed a degree of forbearance which is mitigating. Formal retraining in warrantless entries, rather than the imposition of the forfeiture of vacation days, will address Respondent's deficiencies and further enhance good order and discipline in this Department.

On the other hand, Respondent's failure to provide a business card is a Patrol Guide violation that must be sanctioned strictly. When a Member of Service engages a citizen, it is an official governmental act for which this Department is accountable. By providing a business card, especially in a circumstance where our actions may later be criticized, we communicate to the public we serve that, as a force, we are worthy of the trust reposed in us.

Accordingly, I recommend that Respondent forfeit three (3) vacation days and that he receive formal retraining in warrantless entries.

Respectfully submitted,

Paul M. Gamble PM

Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials

Edward A. Cab...



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER ANTHONY TORRES
TAX REGISTRY NO. 936087
DISCIPLINARY CASE NO. 2019-21556

Respondent was appointed to the Department on January 10, 2005. On his three most recent performance evaluations, he was rated “Exceptional” for 2020, 2021, and 2022. He has been awarded three medals for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Paul M. Gamble RM

Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials